



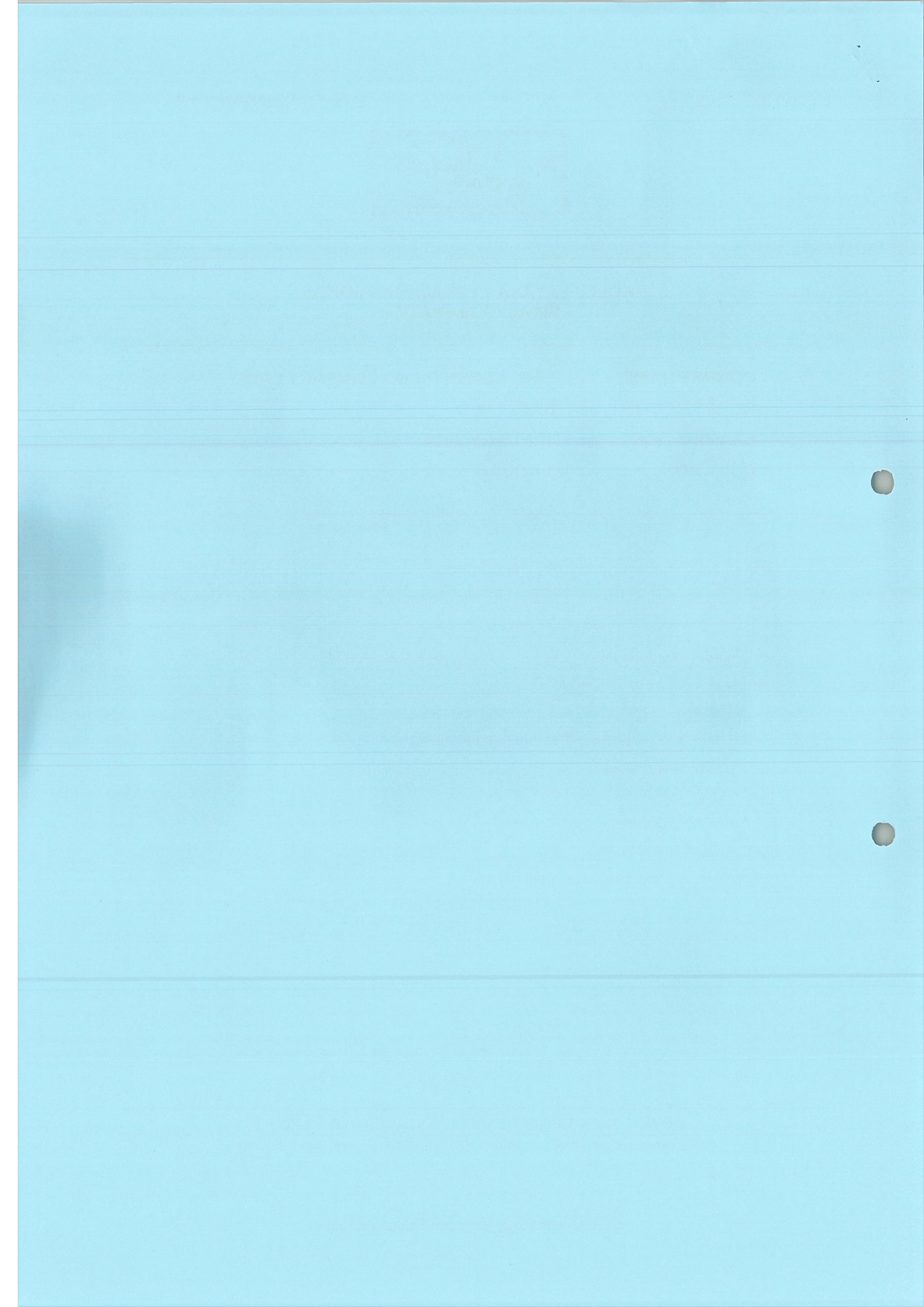
**KOLEJ YAYASAN PELAJARAN JOHOR
FINAL EXAMINATION**

COURSE NAME : PARTNERSHIP AND COMPANY LAW
COURSE CODE : DAC2123
EXAMINATION : JANUARY 2024
DURATION : 3 HOURS

1. This question paper consists of **TWO (2)** parts : PART A (25 MARKS)
PART B (75 MARKS)
2. Candidates are not allowed to bring any material to examination room except with the permission from the invigilator
3. Please check to make sure that this examination pack consist of
 - i. The Question Paper
 - ii. An Objective Answer Sheet
 - iii. An Answer Booklet
 - iv. Companies Act 2016
 - v. Partnership Act 1961 (Revised 1974)

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*This examination paper consists of **13** printed pages including front page*



PART A

This part contains **TWENTY-FIVE (25)** questions.

Answer **all** questions in the Objective Answer Sheet.

1. What is the maximum number of members in a non – professional partnership?
 - A 2.
 - B 20.
 - C 50.
 - D No limit.

2. Which of the following is **true** of a Partnership?
 - i. Every partner is an agent of the firm
 - ii. A partner can be liable for the act of his co-partners
 - iii. Partnership business needs to be registered under Partnership Act 1961
 - iv. A partner cannot transfer his status as partner to someone else without the consent of all the other partners
 - A i, ii and iii.
 - B i, ii and iv.
 - C ii, iii and iv.
 - D All of the above.

3.

It is a combination of a partnership and a company and offer the privilege of a limited liability accorded to its partners and also the flexibility of internal management.

Statement 1

Statement 1 above refer to what type of business vehicles in Malaysia?

- A Company.
 - B Partnership.
 - C Sole Proprietorship.
 - D Limited Liability Partnership.
4. There can be a partnership between **X** and an adult. **X** could be in the partnership for any duration of time until he wanted to disaffirm it. However, **X** will not be liable for debts incurred during his infancy. Based on the situation given, who is **X**?
- A Adult.
 - B Minor.
 - C Company.
 - D Normal Person.
5. A partner who received fixed amount if remuneration is called
- A A quasi partner.
 - B An active partner.
 - C A salaried partner.
 - D A dormant partner.

6. Section 15 of the Partnership Act 1961 provides for
- A Tortious liability.
 - B Criminal liability.
 - C Liability for holding out.
 - D Liability of partner for improper employment of trust property for partnership purposes.
7. Ali one of the partners in AAA Enterprise intended to sell his interest to Abu. They then employed a valuer to inspect the partnership book. However, Ali's partners in AAA Enterprise refuse to allow the valuer to do so.
- Which of the following Section can be referred to if Ali wants to take action against his partners?
- A Section 26 (a) of Partnership Act.
 - B Section 26 (b) of Partnership Act.
 - C Section 26 (g) of Partnership Act.
 - D Section 26 (i) of Partnership Act.
8. Section 19 (2), Section 19 (3) and Section 38 (1) of the Partnership Act is the main provision which states
- A Liability of partners in tort.
 - B Liability of retired partners.
 - C Liability of partners in crimes.
 - D Liability of incoming partners.
9. A partner is said to breach his fiduciary duty if
- A He or she refuses to provide capital.
 - B He or she becomes a dormant partner.
 - C He or she terminate the partnership by giving notice.
 - D He or she fail to disclose all material facts of the business to his partner.

10. Rezza is a partner and was appointed as a trustee to a large settlement. He uses the trust property for the purpose of the firm's business and this fact was known to the other partners. The beneficiary of the trust fund wanted to recover the property from the firm.

Which of the following is true regarding the situation above?

- A Only Rezza can be made liable because he committed the breach of trust.
 - B The other partners can be made liable because they knew of the breach of trust.
 - C The other partners cannot be made liable because Rezza was appointed as a trustee in his personal capacity.
 - D The other partners can be made liable because the trust property was misapplied while it is in the custody of the firm.
11. Section 36 of the Partnership Act 1961 provides that a partnership is dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

Statement 2

Statement 2 above referred to

- A Dissolution by Court.
 - B Dissolution by agreement.
 - C Dissolution by expiration of notice.
 - D Dissolution by illegality of partnership.
12. A partnership may not expel any of his partners unless
- A The partner has breached his duty.
 - B The partner has committed misconduct.
 - C The partner is involved in a dispute with the other partners.
 - D There is an express provision to expel in the partnership agreement.

13. Which of the following statement is **true** regarding Company limited by guarantee
- i. May be a public or private company.
 - ii. Member's liability is limited to the amount of he agrees to contribute in the event the company is wound up.
 - iii. Member's liability is limited to the to any amount which the member has undertaken to contribute to the company
 - iv. May be form to provide recreation or amusement or promote commerce, industry, art, science, religion, charity etc.
- A i, ii and iii.
B I, iii and iv.
C ii, iii and iv.
D All of the above.
14. The followings are the required conditions for a private company
- i. It is a company limited by share
 - ii. It restricts the transfer of the shares
 - iii. It cannot offer its shares or debentures to the public
 - iv. It cannot allot share or debentures with a view of offering them to public
- A i and iv.
B i, ii and iii.
C i, iii and iv.
D All of the above.
15. A company is a subsidiary for another corporation only if the other corporation
- A Control 55% of the voting power of the company.
 - B Control 25% of the voting power of the company.
 - C Control 45% of the voting power of the company.
 - D Control 35% of the voting power of the company.

16. According to Section 25(1) of Company Act 2016, for a Public Company, the name of the company shall end with
- A The word "Enterprise".
 - B The word "Berhad" or the abbreviation "Bhd".
 - C The word "Sendirian" or the abbreviation "Sdn".
 - D The word "Sedirian Berhad" or the abbreviation "Sdn Bhd".
17. Upon payment of the prescribed fee, the Registrar may reserve the proposed name of a company for a period of
- A 14 days.
 - B 21 days.
 - C 25 days.
 - D 30 days.
18. Which of the following is the basic requirements for incorporation of Public Company under the Companies Act 2016?
- A At least one (1) director who ordinarily reside in Malaysia by having a principal place of residence in Malaysia and two (2) promoters.
 - B At least one (2) director who ordinarily reside in Malaysia by having a principal place of residence in Malaysia one (1) promoter.
 - C At least one (1) director who ordinarily reside in Malaysia by having a principal place of residence in Malaysia and two (2) promoters.
 - D At least one (1) director who ordinarily reside in Malaysia by having a principal place of residence in Malaysia and one (1) promoter.

19. Ali is responsible to prepare prospectus for a corporation. Ali is a
- A Agent.
 - B Promoter.
 - C Chief Executive Officer.
 - D Chief Operation Officer.
20. The company has a right to rescind a contract made on its behalf by a promoter, where the promoter had acted in breach of his fiduciary duty. However, the right to rescind the contract will be lost if
- A The company will not proceed with the contract.
 - B The company is considered as rejecting or not accepting the contract done by the promoter.
 - C The third party has obtained or acquired a right over the property concerned bona fide and for value.
 - D The parties in contract can be restored to its original position and no fraud done by the promoter.
21. Alfa Bena Sdn. Bhd. just bought a piece of land. The said land was then subdivided and offered for sale to the public. The board of director later on discovered that Ibrahim, who is one of the promoters of Alfa Bena Sdn. Bhd. had set up a partnership with 2 other people and bought one of the lots. Ibrahim did not disclose his interest in the purchase to the company.
- Decide whether the company can rescind the contract.
- A Yes, because Ibrahim sold his own property to the company.
 - B No, because the parties cannot be restored to their original position.
 - C Yes, because the promoter's failure to disclose his interest in a ground for rescission of the contract.
 - D No, because the land was offered to sale to the public and Ibrahim entitled to buy one of the lots.

22. Ibrahim who is a director and also a member of company is sued for breach of director's duty to the company in the High Court. The constitution of the company states that:

"In the event of a dispute between company and its members, the matter should be referred to arbitration."

Can Ibrahim enforce the provision in the constitution against the company?

- A No, because as a director, he is a third party to the company.
 - B No, because only a director can bring action on behalf of the company.
 - C Yes, because the constitution is a contract between the company and its members
 - D Yes, because the provision in the constitution is included in the contract between Ibrahim and the company
23. The following are the legal effects of Articles of Associations, **except**
- A Not a binding contract between company and outsiders.
 - B A binding contract between company and its directors.
 - C A binding contract between the company and members of the company.
 - D A binding contract between member and other members of the company.
24. Which of the following is not types of winding up?
- A Members voluntary winding up.
 - B Creditors' voluntary winding up.
 - C Liquidators' voluntary winding up.
 - D Winding up by order of the court.

25. Following statement are false statement about winding up **except**
- A The creditors can wind up the company even though the company can still meet their debts when they become due.
 - B The Central bank of Malaysia can submit a petition for the winding up of all licensed insurance companies in Malaysia.
 - C The date of commencement for members' voluntary winding up is the date of petition for winding up is submitted to the court.
 - D In members' voluntary winding up, the director or majority of directors must make a declaration of solvency and the declaration is lodged with the Registrar before the notice of the meeting is sent to the members.

[25 MARKS]

PART B

This part contains **THREE (3)** questions.

Answer **all** question in the Answer Booklet.

QUESTION 1

- (a) Section 4 of the Partnership Act 1961 provides rules for determining the existence of a partnership. Explain the rules.

[15 Marks]

- (b) Abu, Ali and Ahmad are partners of a firm trading under the name and style of AAA Enterprise. The firm deals with the supply of office equipment to government department.

A clause in the partnership agreement clearly states, "No Partner shall enter into contract amounting to more that RM 100,000 without the consent of the other partners"

On 14 February 2023, Abu entered into a contract with Jaya Furniture Sdn. Bhd. for the supply of office cabinets, tables and chair worth RM 150,000.

On 20 February 2023, Abu and Ahmad found out that Ali had a separate business of supplying office stationery to Government departments which were the client of AAA Enterprise. Abu and Ahmad wish to claim Ali's profit for misusing the firm property.

Advise AAA Enterprise.

[15 Marks]

QUESTION 2

- (a) Once a company has been incorporated, the corporate veil will separate the company from its members and officers. However, the court will not hesitate to lift the veil of incorporation if the litigants manage to show the existence of special circumstances.

With reference to the above statement, explain the circumstances in which the court may lift the corporate veil with reference to decided cases.

[15 marks]

- (b) Cantek and Ayu formed a company known as Dua Rakan Sdn. Bhd. The company runs a business of producing and selling virgin coconut oil. The business was successful and the company made a huge profit. However, 2 years later the company suffered losses due to mismanagement. Consequently, the company was unable to pay the creditors and it finally went into liquidation. The liquidators claimed that Cantek and Ayu as shareholders of the company personally liable to pay the creditors.

Advice Cantek and Ayu whether they are personally liable to pay the creditors with reference to the Companies Act 2016 and decided cases.

[15 marks]

QUESTION 3

Mamat, Muthu and Mary are the Director of 3M Sdn. Bhd., a property development company. Mamat was given the task to find a land to be developed by the company. Mamat then entered into an agreement for the purchase of piece of land in Langkawi for RM 2.5 million. The land was owned by Emily, Mamat's wife, but this fact was not disclosed to the company. 3M Sdn. Bhd. now discovered this and wishes to sue Mamat. With reference to the Companies Act 2016 and decided cases, advise the company on the legal position with regard to the above matter and what rights, if any the company has against Mamat.

[15 marks]

[75 MARKS]**END OF QUESTION PAPER**

